

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ROSS UNIVERSITY SCHOOL OF
MEDICINE, LTD.,

09 Civ. 1410 (KAM) (RLM)

Plaintiff,

– against –

BROOKLYN-QUEENS HEALTH CARE,
INC. and WYCKOFF HEIGHTS MEDICAL
CENTER,

Defendants.

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**PLAINTIFF ROSS UNIVERSITY'S
LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS
IN SUPPORT OF ITS MOTION FOR PARTIAL SUMMARY JUDGMENT**

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*Counsel for Plaintiff Ross University School
of Medicine, Ltd.*

Plaintiff Ross University School of Medicine, Ltd., by its attorneys Baker & Hostetler LLP, hereby submits the following Local Rule 56.1 Statement of Material Facts in support of its Motion for Partial Summary Judgment:

1. BQHC is a New York not-for-profit corporation and is the sole member of Wyckoff and Caritas, which held the Hospitals. App. A, Second Am. Compl & Answer ¶3; App. B at ROSS0056.

2. The Affiliation Agreement Between Ross University School of Medicine, School of Veterinary Medicine, Limited, Portsmouth, Dominica and Brooklyn Queens Health Care, Inc. (the "Initial Affiliation Agreement") is attached hereto as Appendix B. App. B; App. C, Deposition of H. McDonald, at pp. 20:3-21:6.

3. The Initial Affiliation Agreement was executed on December 28, 2006. App. B at ROSS0066.

4. The first amendment to the Initial Affiliation Agreement (the "First Amendment") is attached hereto as Appendix D. App. D; App. E, Deposition of J. Romero, at pp. 39:24-40:19.

5. The first amendment was executed on December 5, 2007. App. D at ROSS0055.

6. The second amendment to the Initial Affiliation Agreement and accompanying side letter agreement (collectively, the "second amendment") is attached hereto as Appendix F. App. F; App. G, Deposition of T. Singleton, at pp. 11:10-13:3.

7. The second amendment was executed on February 28, 2008. App. G at BQHC42915, 42917.

8. The Hospitals filed for bankruptcy in February 2009 and have ceased to operate. App. A, Second Am. Compl & Answer ¶¶ 46, 47.

9. Wyckoff and its clinics provide clinical clerkships. App. E, Deposition of J. Romero, at p. 108:3-20.

10. Defendants have refused to provide to Ross clerkships to replace all of the clerkships lost as a result of the closure of the Hospitals. App. H, Deposition of R. Garg, at pp. 58:11-59:23.

11. The report of Ross' damages expert, Elizabeth K. Davis, is attached hereto as Appendix I. App. I; App. J, Dep. of E. Davis, at pp. 14:14-15:3.

12. Ross' damages expert calculated Ross' damages in three components: (1) the Outstanding Pre-payment Balance that remains unearned; (2) the Incremental Costs on Replacement Clerkships Through June 30, 2011; and (3) the Present Value of Future Replacement Costs From July 1, 2011 Through January 31, 2018. App. I, Ex. A.

13. The report of Anthony G. Duffy, whom defendants have tendered as a damages expert, is attached hereto as Appendix K. App. K; App. L, Deposition of A. Duffy, at p. 7:22-24.

14. Defendants' damages expert calculated damages using the same three categories as Ross' expert. App. K, Ex. A.

15. Both parties' experts calculated the Outstanding Pre-payment Balance to be \$6,277,266. App. I, Ex. A; App. K, Ex. A.

16. Both side's experts calculated the Incremental Costs on Replacement Costs through June 30, 2011 to be \$1,073,501. App. I, Ex. A; App. K, Ex. A.

17. Ross' expert calculated the Present Value of Future Replacement Costs From July 1, 2011 Through January 31, 2018 to be \$12,738,735. App. I, Ex. A.

18. Defendants' expert calculated the Present Value of Future Replacement Costs From July 1, 2011 Through January 31, 2018 to be \$5,525,367. App. K, Ex. A.

Respectfully submitted,

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